



THE HON DR CRAIG EMERSON MP

**MINISTER FOR SMALL BUSINESS, INDEPENDENT CONTRACTORS AND
THE SERVICE ECONOMY
MINISTER FOR COMPETITION POLICY AND CONSUMER AFFAIRS
MINISTER ASSISTING THE FINANCE MINISTER ON DEREGULATION**

**Introducing more competition and empowering consumers
in grocery retailing**

How much market concentration is there in grocery retailing?

It is commonly claimed that 80 per cent of groceries sold in Australia are sold by two supermarket chains — Coles and Woolworths. In fact, the two major chains account for about 55-60 per cent of consumer spending on grocery items, including fresh meat, fruit and vegetables. The 80 per cent figure relates to dry packaged groceries¹ and, based on estimates of the Australian Competition and Consumer Commission (ACCC), is closer to 70 per cent.

Although Coles and Woolworths have a large share of the packaged grocery market, competitors are entering the market and expanding the number of stores they own. At present the number of stores owned by the various supermarket industry participants is:

Woolworths: around 800 (includes Safeways)
Coles: around 750
Foodworks: more than 700 (includes convenience outlets)
IGA: around 1200 (includes convenience outlets)
Aldi: more than 200
Spar: around 100
Franklins: more than 80
Supabarn: 5
Costco: 1

Aldi has plans to expand to around 700 stores, rivalling Coles and Woolworths. Costco has opened a store in Melbourne and is planning to expand into NSW with one store initially in western Sydney and up to five in total in Sydney and others in regional centres. Further stores are also planned for Melbourne. Costco is also planning to establish stores in Queensland, South Australia and the ACT.

¹ According to the Nielsen Company's ScanTrack data for packaged groceries, in 2008 Woolworths accounted for 44 per cent of sales and Coles 34 per cent, for a total of 78 per cent.

Australia has a relatively concentrated market for grocery retailing, which is not unexpected in a country of our population size that is geographically remote from other economies. More competitors are entering the market and in recent times existing grocery retail chains have been expanding their market reach.

Supermarket acquisitions

A common perception is that Coles and Woolworths expand mainly by acquiring independent grocery retail stores. Since 2002, Coles has acquired 18 independent retail stores out of a total expansion of 155 stores. Coles is in the process of selling 45 of its stores to Foodworks. Since mid-2001, Woolworths has acquired 21 independent stores out of a total expansion of 270 stores, accounting for less than 8 per cent of all new stores.

The ACCC introduced the voluntary Charter for the Competitive Sale of Independent Supermarkets in July 2005. The Charter was designed to address concerns about the exclusive negotiation clauses being placed in contracts for the acquisition of independent supermarkets by major supermarket chains. Coles, Woolworths, Metcash and Franklins are all parties to the Charter. Under the Charter, acquiring parties cannot prevent independent supermarket retailers from seeking alternative buyers for their stores after receiving a purchase offer (and must make sure that the selling store owners are aware of their rights under the Charter).

Further, Coles and Woolworths generally notify the ACCC of proposed acquisitions of existing supermarkets. But they do not at present consider they are obliged to notify the ACCC of all proposed acquisitions involving undeveloped (greenfield) sites. The Government is considering its policy position on this matter.

Under the mergers and acquisitions provisions of the Trade Practices Act, the ACCC opposed Woolworths' proposed acquisition of the Karabar Supabarn supermarket in Queanbeyan NSW, having considered that the proposed acquisition was likely to result in a substantial lessening of competition in the local market.

Competition is good for consumers

Competition is by far the most effective means of exerting downward pressure on grocery prices. Yet effective barriers have impeded entry by competitors into local and national grocery markets. These barriers to entry have stifled competition to the detriment of consumers.

Barriers to entry and expansion in grocery retailing

Barriers to entry and expansion in grocery retailing have included:

- Foreign investment rules on the development of vacant commercial land that require vacant land acquired by foreign companies to be developed within 12 months;
- Restrictive provisions in leases between shopping centre owners and supermarket chains (restrictive provisions); and

- State and territory and local government planning laws hindering supermarkets establishing in areas outside the major shopping centres.

1. *Foreign investment rules*

Until early in 2009, it was a condition of approval that foreign investors commenced continuous substantial construction on vacant land acquisitions within 12 months of receiving purchase approval. The Rudd Government has extended the foreign investment policy timeframe for the development of vacant commercial land from 12 months to five years.

The change recognised that 12 months was insufficient time for completing the processes required to enable a development to commence and that large companies make forward investment decisions beyond a 12 month horizon, particularly in the case of establishing new supermarkets in previously undeveloped sites.

The policy change was welcomed at the time by Aldi and the competition benefits of this landmark reform are now flowing through, assisting foreign-owned supermarkets like Aldi and Costco to increase their presence in Australia.

2. *Restrictive provisions in leases*

There are provisions in supermarket leases between major supermarket chains and shopping centre owners that effectively prevent centre managers leasing space to competing supermarkets. The restrictive provisions can take the form of an outright prohibition on a second or third supermarket being established in the centre for a specified timeframe (commonly around 10 years). Or they provide for a significant reduction in rent if a second or third supermarket is established in the centre within a specified timeframe.

The ACCC has reached an agreement with Coles and Woolworths to end existing restrictive provisions in supermarket lease with shopping centre owners. For agreements relating to stores that have been operating for more than five years, the restrictive provisions will cease immediately. For newer stores, the restrictive provisions will end no later than five years from the original date of the store opening.

This historic, pro-competitive agreement means that out of 750 restrictive leases, 602 – or 80 per cent – will cease immediately and all of the remaining 20 per cent will be gone within five years. No restrictive provisions will be allowed in new stores.

This ground-breaking move will open up shopping centre space for competitors such as Aldi, Franklins, Foodworks and IGA stores. The ACCC will also engage with other supermarket chains with a view to removing any anti-competitive provisions from their leases.

3. *Planning laws*

Planning laws affecting the location and use of land for specific activities are implemented by the zoning of land. For each zone – for example, residential, business and industrial zones – the planning laws set out the permissible uses of the land.

By restricting the availability of retail space, state and territory and local government planning laws hinder or even prevent supermarkets being established in particular areas. The laws act as an artificial barrier to entry and expansion. Planning laws are particularly a problem for independent supermarkets, since most states and territories have adopted so-called centres policies to concentrate their retail activities in one location and shopping centre owners have a strong preference to lease space to the largest retailers – Coles and Woolworths.

Planning laws and associated zoning restrictions are necessary for traffic management, public amenity and environmental protection. However, they can also be exploited with the purpose of stifling competition. This is at its most blatant where planning laws allow incumbent businesses to object to applications so as to prevent or delay entry by rivals which may affect their commercial interests. This can include making use of protracted appeal processes such as through the lodging of frivolous and vexatious appeals.

The Rudd Government referred the anti-competitive impacts of state and local zoning and planning laws to the Business Regulation and Competition Working Group established by the Council of Australian Governments (COAG). The Working Group has received reports from state and territory governments on their planning laws.

The Business Regulation and Competition Working Group will submit recommendations to COAG later this year aimed at ensuring planning laws do not unjustifiably impede competition in grocery retailing. While the Government is keen to advance the reform process with all states and territories, it will work individually with any state or territory that is committed to early reform.

Empowering consumers

Unit pricing

Unit pricing can assist consumers by enabling them to compare prices readily between different sizes of the same product, between different branded products and also between stores.

Unit pricing is already used in the European Union and the United States. It has proven to be a popular and useful tool that enhances price transparency for consumers when making their purchasing decisions in supermarkets.

The Rudd Government has introduced mandatory unit pricing in Australia for larger supermarket stores. The major supermarkets that have not completed the provision of unit pricing information in their stores have been given until December 2009 to do so. Smaller supermarkets such as local IGA stores that choose to participate in the national unit pricing scheme will be free to do so but once they choose to opt in they must comply with the national regulations.

Redressing power imbalances in bargaining relationships

Potential use of collective bargaining

The collective bargaining notification regime allows small businesses to bargain collectively with larger businesses without breaching the Trade Practices Act. The Rudd Government encourages independent supermarket retailers to make use of the collective bargaining arrangements in negotiations with wholesalers.

Strengthening protections against predatory pricing

The Rudd Government has strengthened the laws against predatory pricing. The new laws deal with more powerful businesses engaging in anti-competitive, sustained below-cost pricing strategies to drive smaller rivals or potential rivals out of the market.

Summing up

This statement responds to all the grocery-specific recommendations of the ACCC's grocery inquiry. The policies outlined in it facilitate greater competition in grocery retailing by reducing barriers to entry into local markets and the national market by supermarket competitors. And through unit pricing it empowers consumers to make informed choices about the supermarket items that constitute the best value for money.

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