# WA INDEPENDENT GROCERS ASSOCIATION (INC.)

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Productivity Commission: Submission: Cost of retail trade study

WA Independent Grocers Association (Inc.) (WAIGA) is the peak industry body for the independent grocery sector in WA. Our Members include franchised Supa IGA and IGA Stores, Supermarkets West stores and general grocery stores throughout the whole of Western Australia. The independent sector in WA has a combined turnover in excess of $2.5billion employs 20,000 people and does over 1 million customer transactions a week.

WAIGA believes in a truly competitive environment for the retail sector in Australia and has as its first principle that without competitors there is no competition.

The grocery retail sector in which our members operate is ruled by the duopoly of Woolworths and Coles who hold a combined 80% market share of packaged grocery in Australia. The other participants are Aldi, Costco and independent stores supplied in pallet lots from Metcash owned warehouses in the Mainland States and Territories, Tasmania is supplied from a joint venture Woolworths and TIR owned warehouse and Spar stores in Queensland and New South Wales are supplied from their own warehouse.

The 5 retail industry subdivisions do not allow correct comparisons of like for like businesses in Australia. We believe that for our sector with total turnover of some $80billion nationally the obvious sub division is one that covers packaged grocery outlets, not food retailers in total. This subdivision would be made up of Coles, Woolworths, Aldi and the independents mentioned above. This group of retail has a completely different supply chain and cost structure to the other food retailing outlets. Many of the small retailers in the food retailing subdivision would actually purchase the goods they sold from one of the larger packaged grocery retailers as when goods are on promotion they are quite often at a price below the traditional wholesale outlet that those smaller food retailers use.

The following apply to our members in the grocery retail sector:

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|---|---|
| Cost of Goods | 76% |
| Cost of doing business | 19.5% |
| Net Profit | 4.5% |

These are the average industry figures for our members and are where most try to be. Of course with over 300 independently run businesses they will differ slightly depending on factors such as metro or country location, mix of product sold and demographic.

All our independent grocery retail outlets in WA are supplied case good groceries from the Metcash warehouse in Perth. The Metcash operation we believe would take a 10% gross margin which would include their net profit. Case good grocery manufacturers would be paid 62 to 65% of retail value depending on the percentage of goods sold at promotional prices. In the case of fruit and vegetables, fresh meat, delicatessen lines, fresh dairy, bakery and fresh seafood in many cases our members buy from the same suppliers that Coles and Woolworths buy from. In many instances even though our members buy through the same supply chain as the majors and in similar quantities the do not buy at the same price. These combined categories can make up to 50% of what a store sells.

Cost of doing business:

| | |
|---|---|
| Wage and labour on costs | 10-11.5% |
| Occupancy costs and rent | 3-4% |
| Transport | 0.6% metro/up to 2% country |
| Energy (electricity) | 2% metro/up to 3% country |

Public policy obviously impacts on these costs. In the case of wages smaller stores do not have access to the agreements that both Coles and Woolworths make with the Shop Distributive and Allied Employees Association. These agreements enable the large retailers to limit and reduce the rates of pay for Saturday, Sunday and Public Holiday by agreeing to pay a little more for the weekly rate. An agreement such as these allow the retailer to have a lower percentage wage cost on days where our members have to pay hourly rates that are in the Fair Work Act. These rates can be up to twice what the larger retailers pay per hour for some shifts on a Public Holiday.

Public policy also impacts on the disproportionate rate that smaller retailers pay for electricity.

We have an example where in Edgewater Shopping Centre the independent liquor store pays 22% more for electricity to run their lighting and refrigeration verses the supermarket in the same centre. Both charged from the same supplier and the supplier has the same cost to produce electricity and the same cost to deliver the electricity to both outlets. Usage for the supermarket is 28,534 and the liquor store 8,489.

We do not know what price Coles and Woolworths pay for electricity as the prices are not available. Our members combined cost of electricity could be in excess of $500million, if there is a differentiation of 20% plus it is a drain on the productivity of the sector. As the cost of power to produce for both large customers and smaller customers is the same, as each outlet is using the electricity for fridges and freezers the profile for taking that electricity is the same and it is delivered in the same way how can a differentiation in price be justified. We believe this to be a case of anti-competitive price discrimination that is no longer covered by Competition Law in Australia as it is in other countries.

A similar situation occurs in the procurement of some goods for sale with Coles and Woolworths able to gouge cheaper prices from some suppliers even though the independent is buying in the same or similar quantities.

The model for the former s49 of the then Trade Practices Act was the Robinson-Patman Act in the United States.

In recommending the repeal of the then s49 prohibition on anti-competitive price discrimination, Professor Fred Hilmer argued in 1993 in his report to the Keating Government on National Competition Policy, that the then s49 prohibition was unnecessary because remedies were available under s46 (misuse of market power) and other provisions of the Trade Practices Act. The ACCC, however, has failed to take cases on misuse of market power in this context, despite the chairman, Mr Rod Sims's promise when he took over the chairmanship of the ACCC that the commission would be more assertive in clarifying the law by taking cases to court.

The fact is anti-competitive price discrimination is now rife in the grocery sector, to a far greater extent than it was prior to the repeal of s49. Former Senator Dee Margetts has pointed out in a publication (in the Journal of Australian Political Economy, No. 67, Winter 2011) both that the grocery price CPI exceeded general CPI and that the decline of the Franklins supermarket chain began shortly after the repeal of s49.

In their submission to the 2011 Senate Inquiry into the Dairy Industry Lion Dairy and Drinks (LD&D) stated that they could not make money out of the supply of house brand milk to either Coles or Woolworths at the contract price they charged. They said to make money out of their dairy division they had to sell milk at a higher price to smaller outlets to recoup the lost margin from the sale of house brand milk. From their admission they charge higher prices to independent customers than Coles and Woolworths on a range of dairy products that they sell. This is a further example of the adverse impact of anti-competitive price discrimination in Australia. The ACCC has argued that, despite the domination of Woolworths and Coles and their use/misuse of market power, there is no case to be taken under s46. Ironically, this would support our view that the Australian grocery market is dysfunctional because of the absence of a specific prohibition on anti-competitive price discrimination and that such a prohibition should be reinstated.

While the ACCC argues that s46 does not give the commission the opportunity to act, the commission has put forward no recommendation on possible amendments to the Competition and Consumer Act which would allow the commission to ensure that anti-competitive price discrimination cease.

We have retailers in Australia complaining that they are not able to buy products at the same price as overseas competitors while at the same time without effective anti-competitive price discrimination legislation in Australia we allow manufacturers to be forced into offering better prices to the large chains than they offer to other like customers even when there is clearly no benefit or economies of scale that warrants the manufacturer offering a lower price to selected customers. This means, in effect, that Woolworths and Coles indirectly require suppliers to oblige smaller competitors to cross-subsidise the prices paid by the major chains. As many of the smaller retailers will either match or go lower than the price the chain charges at retail for many of these products the inefficiency or higher costs of the chain are hidden and productivity benefits that would be delivered to consumers are retained by the chain in unproductive practices or extra profit.

For many decades now, a specific prohibition on anti-competitive price discrimination has been regarded by competition regulators internationally as 'core to running a level playing field in business across the board' –for big companies as well as small companies.

In the United States a prohibition on anti-competitive price discrimination exists in the Robinson-Patman Act of 1936. The prohibition of anti-competitive price discrimination was taken up by the Treaty of Rome in 1957 (and subsequent versions) which set up the Common Market and later the European Union. It has its parallel in UK competition law (Competition Act 1998). There are similar provisions in Canada's Competition Act. The conclusion taken from these acts is that the competition regulators view anti-competitive price discrimination as deleterious to competition as it is injurious to competition, not just competitors.

Critics of the Robinson-Patman Act, in both the United States and Australia, have for many years claimed that it has been ineffectual. That claim stands at odds with observed reality: United States markets are vibrant and competitive and stand stark in contrast to the dysfunctional hyper-concentration of many Australian markets. Clearly the Robinson-Patman Act's policing of anti-competitive price discrimination contradicts what has occurred in Australian markets since the abolition of the s49 prohibition, the legacy of the Keating Government and National Competition Policy.

We note that in the Competition Policy Review announced by the Prime Minister last year on of the terms of reference one touches on the issue, '4.6. consider ways to ensure Australians can access goods and services at internationally competitive prices, including any remaining parallel import restrictions and international price discrimination.'

Clearly if all participants in a market are not able to source products at the same prices you cannot have true competition. It does not matter if the anti-competitive price discrimination occurs internationally or locally, both have the same effect on competition.

We ask the Productivity Commission to do what it can to help level the playing field for the grocery retailer sector in Australia.

John Cummings

President